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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/068,804	05/14/1998	SAMUEL I. MILLER	00786/292002	2704

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FISH & RICHARDSON PC
225 FRANKLIN ST
BOSTON, MA 02110

EXAMINER

BASKAR, PADMAVATHI

ART UNIT PAPER NUMBER

1645

DATE MAILED: 12/31/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/068,804

Applicant(s)

MILLER, SAMUEL I.

Examiner

Padmavathi v Baskar

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17, 18 and 46-95 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 17-18, 46-95 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

1. Applicant's amendment filed on 10/22/02 is acknowledged. Claims 17-18, 46-95 are pending in the application. Claims 46-50, 52-56, 58-62, 64-68 70-74, 76-80, 82-85 and ⁹7-95_x have been amended.

2. Upon further review of the application, previous office action and the Applicants response to the office action, it is determined that this application has plurality of patentably distinct inventions. Although, applicant has received the Office action for all plurality of patentably distinct inventions, it is determined at this time point of prosecution it is necessary to restrict the invention so as to allow the applicant and the office to ensure high quality of examination of a single invention.

3. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 17-18,46-51and 87 drawn to SspB gene, vector and host cell and method of use, SEQ ID No: 1 or a sequence encoding SEQ ID No: 5.

Group II, claims 17-18,52-57, 88 and 93 drawn to SspC gene, vector and host cell and method of use; SEQ ID No: 2 or a sequence encoding SEQ ID No: 6

Group III, claims 58-63, 89 and 94 drawn to SspD gene, vector and host cell; SEQ ID No: 3 or a sequence encoding SEQ ID No: 7.

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Group IV claims 64-69, 90 and 91 drawn to SspA gene, vector and host cell; **SEQ ID No: 4 or a sequence encoding SEQ ID No: 8.**

Group V claims 70-75, and 95 drawn to SspH gene, vector and host cell; **SEQ ID No: 13 or a sequence encoding SEQ ID No: 14.**

Group VI claims 76-81 and 92 drawn to StpA gene, vector and host cell; **SEQ ID No: 10 or a sequence encoding SEQ ID No: 12.**

Group VII claims 82-86 drawn to SspB gene, ~~SspC gene, SspD and SspA gene~~; vector and host cell, **SEQ ID No: 15**

4. The inventions listed as Groups I-VII do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The inventions of Groups 1-VII are drawn to patentably distinct molecules, which have materially different physical and chemical properties, and structures as represented by their divergent sequences. GROUP's 1-VII different nucleotide sequences encoding different proteins that are structurally distinct chemical compounds and are unrelated to one another. These sequences are thus deemed to constitute independent, distinct inventions within the meaning of 35 U.S.C. 121 and 372 and lack the same special technical feature. Absent evidence to the contrary, each such sequence is presumed to represent an independent and distinct invention, which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

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In accordance with 37 CFR 1.499 and subjected to restriction requirement.


5. Applicant is required, in reply to this action, to elect a group and identify the SEQ.ID.NO to which the claims shall be restricted. The reply must also identify the claims readable on the elected invention, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Padmavathi v Baskar whose telephone number is (703) 308-8886. The examiner can normally be reached on M-F (6:30A.M-4: 00 P.M.) First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on (703) 308-3909. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4242 for regular communications and (703) 308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

P. Baskar Ph.D.
12/17/02


JAMES HOUSEL 12/24/02
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600